

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.5540 OF 2007

Dr.(Mrs.) Swati M. Karande

and Anr. : Petitioners.

versus

D.N.Nagar K-3, Co-operative

Housing Society Ltd. & ors. : Respondents.

Mr.G.S.Godbole with Mr.S.S.Kanetkar for the
Petitioners.

Mr.V.A.Thorat i/by M/s.V.Deshpande for Respondent
Nos.1, 3 and 4.

Mr.C.U.Kamdar i/by Ms.Laxmi Murali for Respondent
No.2.

CORAM : A.P.DESHPANDE, J.

DATED : SEPTEMBER 27, 2007.

ORAL ORDER

1. Rule, returnable forthwith. Taken up for
final hearing by consent of the learned counsel
for the parties.

2. The present petitioners claim to be the bonafide members of Respondent No.1 Housing Society. Petitioner No.1 is the occupant of a flat on first floor whereas Petitioner No.2 is the occupant of a flat on 3rd floor. Respondent No.1 is the Housing Society which has passed resolutions in Annual General Meeting held on 5.6.2005 as well as in the Special General Body Meetings held on 8.1.2006, 5.5.2006 and Annual General Meeting held on 18.6.2006 which proceeds to take decision in regard to re-development of the property, after approving amalgamation of Respondent No.1 and Respondent No.3, which has given rise to bring into existence a new amalgamated society by name Neptune Co-operative Housing Society Ltd. Respondent No.2 is a developer or builder, who has been entrusted with the work of re-development. A proposal for re-development was in active consideration of Respondent No.1 since the year 2004 and the husband of Petitioner No.1 was one of the committee member of the Re-Development Committee of Respondent No. 1 and, thus it could be safely assumed that the Petitioner No.1 was not averse

to re-development as such. Petitioner No.1 is using the premises in her occupation on the first floor for non-residential purpose as a clinic of dentist. The anxiety of the Petitioner No.1 is to secure non-residential premises in lieu of the present residential premises which is being used for non-residential purpose and the Respondents are not willing to give non-residential premises to the petitioners to the extent expected by Petitioner No.1. In this fact situation the Petitioners filed a Dispute before the Co-operative Court making two fold prayers :- (1) seeking a declaration that the decision taken by the Society in regard to the re-development so also amalgamation is illegal, improper, null and void. (2) Further declaration is sought that the Petitioner No.1 is entitled for allotment of Commercial Premises on the first floor in the proposed new building which is to be constructed on the property of the society. In the said Dispute, an application came to be moved seeking interim relief in the nature of injunction. The temporary injunction prayed for was in two parts. The first one was to restrain the respondents from carrying out or taking any further steps towards re-development of the property of

Opponent No.1 society as per the decisions/resolutions passed in the Annual General Meetings and in the Special General Body Meetings; and the second prayer goes to seek an order restraining the Opponents from forcibly dispossessing the Petitioners from the suit flats. The trial Court so also the first Appellate Court have rejected the applications for temporary injunction moved by the Petitioners in totality.

3. Before this Court, the learned Senior Counsel Shri Thorat, appearing for Respondent Nos.1, 3 and 4 and, learned Senior counsel Mr.Kamdar, appearing for Respondent No.2, have fairly stated that the Petitioner cannot be forcibly dispossessed. It is further stated by the learned counsel for the respondents that the petitioners will not be evicted without following due process of law. The said statement is accepted. Thus, the main apprehension of the petitioners that they will be dispossessed without following due process of law ceases to exist.

4. The question that now remains to be

considered is as to whether the petitioners are entitled to further injunction staying re-development of the property and my answer to the same is in the negative for the reasons set out hereinafter. An order of amalgamation of the Respondent No.1 and Respondent No.3, which brings into existence a new amalgamated society i.e. Respondent No.4 is holding the field. It is not seriously in dispute that except one occupant, all the occupants from the Respondent No.3 - building have vacated the premises and it is so asserted by the respondents. The resolutions, taking a decision of re-development of property, are passed by the Respondent No.1 - society in its Annual General Meetings and Special General Body Meetings. Some of the occupants from Respondent No. 1 - building have also vacated the premises. The Petitioners are also not opposing the re-development as such but are claiming suitable commercial premises in lieu of existing premises. If this be the bone of contentions, then there is hardly any justification in seeking and more so in granting temporary relief in terms of first prayer which goes to seek temporary injunction against the respondents from proceeding further in

re-development on the property.

5. The learned counsel for the petitioners has submitted that the petitioners are also opposing re-development of the property at the hands of Respondent No.2. Selection of a developer and entering into a contract with the developer does not depend upon the whim of one or two members. Respondent No.2 has been appointed as a developer by the society and the said action has been approved by the General Body. Thus, the appointment of Respondent No.2 as a developer prima facie appears to be legal and at any rate cannot be faulted at this stage.

6. Having regard to the totality of the facts and circumstance, I am of the clear view that the statement made by the learned Counsel for the respondents tantamounts to grant of prayer No. (ii) made in the injunction application before the Co-operative Court. As the respondents have assured this court that the petitioners will not be dispossessed without following due process of law, no further relief can be granted to the petitioners.

7. The learned counsel for the petitioners submits that a reference made by the Co-operative Appellate Court in its impugned order and to be precise in Para 23 of the order to Section 95 of the MHADA Act is misconceived. The learned Senior Counsel appearing for the Respondents do not dispute the said position and states that the reference to Section 95 of the MHADA Act is improper. Hence the observations made in para 23, on concession, are expressly expunged. I hasten to add that the trial Court shall proceed to decide the Dispute uninfluenced by the observations made in the impugned order dated 9.7.2007 passed by the Maharashtra State Co-operative Appellate Court, Mumbai. With this clarification the writ petition is dismissed.

[A.P.DESHPANDE, J]